

# EXHIBIT

# 1

**FINAL**

**WAIKIKI EDITION  
HONOLULU, HAWAII**

**DESIGN AND TECHNICAL SERVICES AND PRE-OPENING AGREEMENT**

between

**M WAIKIKI LLC**

("Owner")

and

**MARRIOTT HOTEL SERVICES, INC.**

("Manager")

and

**I.S. INTERNATIONAL, LLC**

("Schrager")

Dated as of July 9, 2008



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## **DESIGN AND TECHNICAL SERVICES AND PRE-OPENING AGREEMENT**

**THIS DESIGN AND TECHNICAL SERVICES AND PRE-OPENING AGREEMENT** ("Agreement") is entered into this 9th day of July, 2008 ("Effective Date"), by and among **M WAIKIKI LLC** ("Owner"); **MARRIOTT HOTEL SERVICES, INC.** ("Manager"); and **I.S. INTERNATIONAL, LLC** ("Schrager").

### **RECITALS**

A. Owner and Manager have entered into and executed that certain management agreement dated as of the date hereof (the "Management Agreement") pursuant to which Owner has engaged Manager as the manager of an EDITION hotel containing approximately three hundred fifty-three (353) Guest Rooms in an existing hotel currently under renovation in Waikiki, Honolulu, Hawaii;

B. Owner acknowledges that an EDITION hotel will be a first-class, boutique hotel as to (i) design, appearance and quality of the Hotel and related improvements, (ii) the appearance, quality and function of the furniture, fixtures, systems and equipment, and (iii) the staffing and operation of the Hotel itself;

C. Owner, Manager and Schrager have agreed upon certain design services and technical services to be provided by Manager and/or Schrager with regard to: (i) the design and construction of the renovation of the Hotel by Owner; and (ii) the design and procurement of the furniture, fixtures, systems and equipment for the Hotel by Owner so that the Hotel, when open for business, shall in all respects meet the requirements and standards of an EDITION hotel; and

D. Owner, Manager and Schrager have agreed upon certain pre-opening services to be provided by Manager and/or Schrager with regard to Manager's and Schrager's recruiting and training of the initial operating staff and the provision of other pre-opening services so that the Hotel, when opened for business on the Flagging Date, shall in all respects meet the requirements and standards of an EDITION hotel.

NOW, THEREFORE, Owner, Manager and Schrager, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

### **ARTICLE 1** **DEFINITIONS AND GENERAL MATTERS**

1.1 Definitions. All terms not defined in this Agreement shall have the meanings ascribed to them in the Management Agreement.

“Agreement” shall mean this Design and Technical Services and Pre-Opening Agreement, including the exhibits attached hereto, as it may be amended, restated or supplemented from time to time.

“Audio/Video Systems” shall include, but not be limited to, the following Hotel systems: general audio and video systems (audio/video) for the Hotel, entertainment audio/video systems, video information systems, public address systems and the master antenna television distribution system.

“Case Goods” shall mean furniture and furnishings used in the Hotel, including, without limitation: chairs, beds, chests, headboards, desks, tables, decorative lighting fixtures, and similar items.

“Concept Development Fee” shall have the meaning ascribed to it in Section 4.3.

“Conceptual Plans” shall mean, collectively, the plans and specifications and other materials set forth in Sections 2.1.5, 2.2.1, 2.2.2, 2.2.3 and 2.2.4.

“Decorative Items” shall include, but not be limited to, artifacts, artwork, banquettes, carpeting, decorative lighting fixtures, etched glass, furniture, graphics, interior landscaping, radios, interior signage, televisions and window treatments.

“Designer” shall have the meaning ascribed to it in Section 1.02(a).

“Design Schedule” shall have the meaning ascribed to it in Section 1.02(b).

“EDITION Technical Standards” shall mean, as of the Effective Date, the “JW Marriott Hotels & Resorts Design Standards” dated January 2005, as revised from time to time, published by Manager’s Architecture and Construction Division. The parties acknowledge that the EDITION Technical Standards are preliminary in nature and under revision and refinement by Manger and Schrager, which revisions and refinements shall, at the request of Manager, be incorporated into the Hotel.

“EDITION Hotel System” shall mean the chain of full-service boutique hotels operated and managed by Marriott (or one or more of its Affiliates) that is, as of the Effective Date, operated under the Trade Name or mark “EDITION Hotels.”

“Effective Date” shall have the meaning ascribed to it in the Preamble.



“Exterior Identity Signage” shall mean exterior illuminated or non-illuminated signs for identification of the Hotel, such as wall-mounted building signs, pylon signs and ground-mounted monument signs.

“Extraordinary Event” shall mean any of the following events, regardless of where it occurs or its duration: acts of nature (including hurricanes, tornadoes, cyclones, other severe storms, winds, lightning, floods, earthquakes, volcanic eruptions, fires, explosions, disease, or epidemics); fires and explosions caused wholly or in part by human agency; acts of war or armed conflict; riots or other civil commotion; terrorism; strikes or similar labor disturbances; embargoes or blockades; shortage of critical materials or supplies; action or inaction of governmental authorities which have an impact upon the Hotel; the revocation or refusal to grant licenses or permits, where such revocation or refusal is not due to the fault of the party whose performance is to be excused for reasons of the Extraordinary Event; and any other events beyond the reasonable control of Owner, Manager or Schrager, as appropriate.

“Facilities Program” shall have the meaning ascribed to it in Section 2.1.1.

“FF&E” shall mean furniture, furnishings, fixtures, Soft Goods, Case Goods, Decorative Items, signage, Audio/Video Systems, kitchen appliances, refrigerators, minibars and equipment, including front desk and back-of-the-house computer equipment, but shall not include Fixed Asset Supplies or Software.

“Fixed Asset Supplies” shall mean items included within “Property and Equipment” under the Uniform System of Accounts which may be consumed in the operation of the Hotel or are not capitalized including, but not limited to, linen, china, glassware, tableware, uniforms, and similar items, used in the operation of the Hotel.

“Flagging Renovation” shall have the meaning ascribed to it in Section 2.5.4.

“Food/Kitchen Equipment” shall mean all food preparation, cooking and holding equipment; exhaust hoods and hood fire protection systems; general storage layout, refrigerators and freezers (including coils, condensers and compressors); ice-making, beverage dispensing and other food and beverage equipment; dishwashing equipment (except any glass washer included in Housekeeping Equipment); and all other similar items required for a complete food and beverage service of the Hotel.

“Graphics” shall mean food and beverage logos; name signs for suites, meeting rooms, board rooms, conference suites, and ballrooms; Guest Room numbers; all directional signs; exterior signs except Exterior Identity Signage; Guest Room evacuation signs; elevator, handicapped, fire stair, and elevator restriction signs; miscellaneous directional and loss prevention/safety signs; and all signs required by or for municipal, department of transportation, fire safety, or other jurisdictional authority for the operation of the Hotel.





“Guest Room” shall mean a separately-keyed lodging unit in the Hotel.

“Hotel Systems” shall include, but not be limited to, software, hardware, cabling and all other items necessary for a computer; rooms management systems; front office, back office and accounting management systems; sales and reservations systems; timekeeping and Manager’s automated payroll systems; point-of-sale systems, including food, beverage and retail functions; food and beverage inventories systems; engineering software; and word processing and other personal computer applications.

“Housekeeping Equipment” shall mean equipment items (including glass washer) to be used by Hotel employees for cleaning the Hotel on a regular basis.

“Inventories” shall mean “Inventories” as defined in the Uniform System of Accounts, such as, but not limited to, provisions in storerooms, refrigerators, pantries and kitchens; beverages in wine cellars and bars; other merchandise intended for sale; fuel; mechanical supplies; stationery; and other expensed supplies and similar items.

“Laundry Equipment” shall mean washers, washer/extractors, dryers, chest-type ironers, steam boiler, thermal fluid heater for ironer, lint control devices, linen folders, linen carts, dry cleaning equipment (if required), laundry sinks, air compressors, laundry scales and all other similar items required for a complete laundry with ironing capacity.

“Management Agreement” shall have the meaning ascribed to it in the Recitals.

“Manager” shall have the meaning ascribed to it in the Preamble.

“Manager/Schrager Rep” shall have the meaning ascribed to it in Section 1.2(c).

“Opening Date” shall mean the first (1<sup>st</sup>) day on which the Hotel is open for business to paying overnight guests.

“Owner” shall have the meaning ascribed to it in the Preamble.

“Owner Rep” shall have the meaning ascribed to it in Section 1.2(c).

“Plans” shall have the meaning ascribed to it in Section 2.3.1.

“Pre-Opening Account” shall mean a special account or accounts, bearing the name of the Hotel, established by Manager in a bank or trust company designated by Manager.



“Pre-Opening Expenses” shall mean those expenses incurred prior to and after the Opening Date pursuant to Section 5.3 that are necessary for the preparation of the Hotel for operation, including, but not limited to, salaries and wages, costs of interim office space, furniture, equipment and systems, professional fees, telephone expenses, staff hiring and training costs, travel and moving expenses, costs of entertainment, opening celebrations and functions (including food, beverage, labor and room accounts of invitees), the cost of heat, light, power and clean-up expenses not chargeable to the cost of acquiring or constructing the Hotel, advertising, public relations and promotion expenses, employee benefits and meals prior to opening, classified advertising, agency fees and recruitment costs, pro rata costs of Manager or its Affiliates in performing such services including personnel costs and expenses allocated in a reasonable manner, and other associated and miscellaneous expenses.

“Project” shall mean an existing three hundred fifty three room hotel and related meeting and public spaces and support facilities and shall include the design, construction, furnishing and equipping of the Hotel, including, without limitation, the design, construction, furnishing and equipping of the porte cochere, lobby, elevator interiors, ballroom and meeting spaces, pool decks, public areas, guest rooms and corridors and other interior areas of the Hotel as may be agreed upon between Owner, Manager and Schrager (the “Project Areas”) and all related infrastructure that is used in connection with the Hotel or is incidental to the use thereof.

“Project Areas” shall have the meaning ascribed to it in the definition of Project.

“Punchlist Items” shall have the meaning ascribed to it in Section 2.5.2.

“Reimbursable Expenses” shall mean the reasonable actual expenses incurred by Manager, Schrager or their respective Affiliates, directly or indirectly, in connection with providing design and technical services pursuant to Article 2 and Article 3, whether before or after the execution of this Agreement, including, but not limited to: transportation (including airfare) and lodging and meals incidental thereto; telephone calls, telegrams, facsimile transmissions, computer line charges, postage and use of courier services; photocopying and reproduction by other means of reports, drawings, specifications and similar Project-related documents; the use of highly specialized equipment; and fees paid by Manager and/or Schrager to independent consultants for their services and expenses.

“Schrager” shall have the meaning ascribed to it in the Preamble.

“Security Systems” shall mean video surveillance equipment; two way radio systems; inspection tour recording systems; security alarm systems; access control systems (pedestrian and vehicular); and other special security systems required for the Project.

“Soft Goods” shall mean all fabric, textile and flexible plastic products (not including items which are classified as “Fixed Asset Supplies”) which are used in furnishing the Hotel, including,

